

INFORMATION BULLETIN #76

SALES TAX

October 2008

DISCLAIMER: Information Bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Determination of Sales Tax for Flight Instruction and for Leased Aircraft

EFFECTIVE DATE: July 1, 2008

REFERENCES: IC 6-2.5-4-16 and IC 6-2.5-5-8

INTRODUCTION

HEA 1125-2008 SECTION 8 added IC 6-2.5-4-16 effective July 1, 2008, to provide guidelines for the implementation of sales tax on the lease of aircraft when the aircraft is used to provide flight instruction. SEA 500-2007 SECTION 13 amended IC 6-2.5-5-8 effective July 1, 2008, to provide guidelines for when a person acquires an aircraft for leasing and the provisions for whether the person is actually engaged in the business of leasing aircraft.

FLIGHT INSTRUCTION

IC 6-2.5-4-16 clarifies the taxability of the lease or rental of an aircraft when it is combined with a flight instructor's services to provide in-flight training to a student pilot.

If the instructor leases or rents an aircraft to the student and provides flight instruction to the student during the term of the lease or rental, the gross retail income that is subject to

the sales tax is the amount charged by the instructor for the lease or rental of the aircraft used in conjunction with the flight instruction services provided to the student pilot. Any charges related to the instructor's service of instructing the student are exempt from the sales tax if the lease or rental of the aircraft and the charge for the instructor's services are separately stated.

ACQUISITION OF AIRCRAFT FOR RENTAL OR LEASING

IC 6-2.5-5-8, effective July 1, 2008, provides that a person who acquires an aircraft for rental or leasing in the ordinary course of the person's business is not automatically exempt from the sales tax as a purchase acquired for rental or leasing.

A purchaser of an aircraft for rental or leasing must meet certain requirements before the purchase is exempt from the sales/use tax. An exemption will be granted on the purchase of the aircraft if the annual revenue derived from renting or leasing the aircraft is equal to or greater than 10 percent of the original cost or book value of the aircraft (whichever is greater), if the original cost of the aircraft or book value was less than \$1 million or 7.5 percent of the original cost or book value of the aircraft (whichever is greater), if the original cost or book value of the aircraft was \$1 million or greater.

DETERMINATION OF BOOK VALUE

The book value of an aircraft shall be determined by using the *Aircraft Bluebook Price Digest*. The actual book value of a particular aircraft will be determined by using the average retail value adjusted for airframe time, engine time, additional equipment, and the prime condition adjustment if applicable.

PRORATING REVENUE

If the aircraft is placed in service on a date other than the first day of the month, and on or before the 15th of the month, the aircraft will be considered to be placed in service on the first day of the month. If the aircraft is placed in service after the 15th of the month, the aircraft will be considered to be placed in service on the first day of the subsequent month.

If the aircraft is taken out of service for maintenance, repair, refurbishment, or remanufacture of the aircraft, the time that the aircraft is out of service will not be used to compute the annual revenue necessary to be exempt from the sales/use tax.

EXAMPLE: An aircraft was purchased for \$2 million and the aircraft was acquired for rental and leasing. The minimum annual revenue that must be generated to maintain the sales/use tax exemption is \$150,000. The aircraft is taken out of service for 90 days for refurbishing and other maintenance. The adjusted minimum annual revenue is 7.5 percent of the original annual revenue that was determined to qualify for the sales/use tax exemption. The lessor will be required to generate \$112,500 in annual revenue to qualify for the sales/use tax exemption.

ANNUAL REPORT

The lessor of the aircraft shall annually report to the Aeronautics Section of the Tax Administration Division of the Department of Revenue. The report shall be due annually 30 days after the month in which the aircraft was originally placed in service for leasing.

The report shall include the name, address, and phone number of the lessor and the location of the aircraft when it is not in operation. Also included is the year, make, model, and N number of the aircraft along with the original cost and book value of the aircraft. The lessor shall report the total revenue from taxable leases, the amount of sales tax collected, the total revenue from exempt leases, and the total revenue from leases to related parties.

FAILURE TO QUALIFY FOR EXEMPTION

If a person engaged in the business of leasing an aircraft does not meet the minimum annual revenue amount for the lease of the aircraft, the person will be subject to the sales/use tax that would have been originally due based on the original cost or book value of the aircraft.

All use of the aircraft must be charged a lease or rental fee plus sales tax, including related parties; however, the revenue generated from related parties cannot be included when computing the annual revenue figure.

A handwritten signature in black ink that reads "John Eckart". The signature is fluid and cursive, with a large loop at the beginning of the "J" and a stylized "Eckart".

John Eckart
Commissioner